



0000130874

ORIGINAL

Steve Wene, State Bar No. 019630
MOYES SELLERS & HENDRICKS LTD.
1850 N. Central Ave., Suite 1100
Phoenix, Arizona 85004
Telephone: 602-604-2141
e-mail: swene@law-msh.com

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, CHAIRMAN
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

NOV 1 2011

DOCKETED BY

AZ CORP COMMISSION
DOCKET CONTROL

2011 NOV - 1 P 4:29

RECEIVED

IN THE MATTER OF THE APPLICATION
OF CERBAT WATER COMPANY FOR
APPROVAL OF A RATE INCREASE

Docket No. W-02391A-10-0218
Docket No. W-02391A-11-0166
Docket No. W-02391A-11-0309

IN THE MATTER OF STAFF'S REQUEST
FOR COMMISSION ISSUANCE OF AN
ORDER TO SHOW CAUSE FOR THE
FAILURE OF CERBAT WATER COMPANY
TO COMPLY WITH COMMISSION RULES
AND REGULATIONS

COMPLIANCE FILING

IN THE MATTER OF THE APPLICATION
OF CERBAT WATER COMPANY FOR
AUTHORITY TO INCUR LONG-TERM
DEBT

Cerbat Water Company ("Company" or "Cerbat"), hereby files the following
documents in compliance with the Arizona Corporation Commission ("Commission")
requests:

- Affidavit certifying Cerbat Water Company owns the plant equipment used to provide water service (*see* Attachment 1);
- Complaints filed by Gilbert Pump and Empire Pump (*see* Attachments 2 & 3);
- Balances with vendors (*see* Attachment 4).

Note the balances with vendors address only principal due to the fact that the interest rates and attorneys fees are at issue in the cases. To our knowledge, there has been no final determination on those issues.

DATED this 1st day of November, 2011.

MOYES SELLERS & HENDRICKS LTD.



Steve Wene

Original and 13 copies filed this
1st day of November, 2011, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007



ATTACHMENT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFFIDAVIT

Nevada
STATE OF ~~ARIZONA~~)
Clark)
County of ~~Mohave~~)

ss.

I, the undersigned, after being first duly sworn upon my oath, hereby affirm as follow:

- 1) I am over the age of eighteen.
- 2) I have personal knowledge of the statements set forth herein and I am competent to testify at a hearing or trial with respect to the same.
- 3) I certify that the Cerbat Water Company owns all of the plant equipment used to provide water to its water service customers.

DATED this 31th day of October, 2011.

B. Marc West

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 31st day of October, 2011. by Burton Marc West

Karen Ramos

Notary Public

My Commission Expires:

3/2/2013



ATTACHMENT 2

FILED

BY: _____

2011 APR 21 AM 11:21

VIRLYNN TERNELL
SUPERIOR COURT CLERK

1 HOOPES, ADAMS & ALEXANDER, PLC
2 2410 W. RAY ROAD, SUITE 1
3 CHANDLER, ARIZONA 85224
4 TELEPHONE (480) 345-8845
5 FACSIMILE (480) 345-8828
6 John R. Hoopes (AZ Bar No. 005893)
7 Patricia A. Alexander (AZ Bar No. 023880)
8 palexander@halaw.com
9 Attorneys for Plaintiff
10

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF MOHAVE

13 GILBERT PUMP & EQUIPMENT
14 COMPANY, an Arizona corporation,

15 Plaintiff,

16 v.

17 CLAUDE K. NEAL FAMILY TRUST,

18 Defendant.

NO.

CV2011-00656

COMPLAINT AND APPLICATION
FOR ISSUANCE OF PROVISIONAL
REMEDY -- REPLEVIN

(Contract)

19
20 For its complaint against defendant Claude K. Neal Family Trust ("Trust"),
21 plaintiff Gilbert Pump & Equipment Company ("Gilbert Pump") alleges as follows:

22 **ALLEGATIONS COMMON TO ALL COUNTS**

23 1. Gilbert Pump is an Arizona corporation authorized and doing business in
24 Mohave County, Arizona.

25 2. Claude K. Neal Family Trust ("Trust") is an entity with its principal place
26 of business in Kingman, Arizona.

27 3. The indebtedness sued upon herein was incurred and became due and
28 payable in Mohave County, such that this court is the proper court and has jurisdiction

1 over this cause of action.

2 4. On October 29, 2010 Gilbert Pump and the Trust entered into a
3 Conditional Sales and Security Agreement (the "agreement"), in which the Trust agreed
4 to make payments to purchase certain equipment and services from Gilbert Pump. [Ex.
5 A]

6 5. Pursuant to the agreement, the Trust granted a security interest in the
7 equipment being purchased.

8 6. A UCC financing statement was properly recorded on November 12,
9 2010. [Ex. B]

10 7. The Trust failed to make proper payments.

11 8. Gilbert Pump received a payment in November and another in January.

12 9. The January payment was returned by Gilbert Pump's bank due to "NSF."

13 10. Gilbert Pump notified the Trust of its deficiency and demanded payment.

14 11. The Trust has however failed to make payment as required.

15 **COUNT ONE**

16 **(Breach of Contract)**

17 12. Gilbert Pump realleges and incorporates by reference herein the
18 allegations of paragraphs 1-11 of its complaint.

19 13. The actions of the Trust alleged herein constitute a breach of the
20 agreement.

21 14. As a result of the Trust's breach of the agreement, Gilbert Pump has
22 suffered actual damages in the amount of \$47,257.66 plus 10% per annum interest as of
23 January 27, 2011.

24 15. This matter arises out of contract and pursuant to the agreement and
25 A.R.S. §12-341.01 Gilbert Pump is entitled to recover its reasonable attorneys' fees.

26 WHEREFORE, Gilbert Pump requests judgment against the Trust, as follows:

27 A. For damages in an amount not less than \$47,257.66 plus 10% per annum
28 interest as of January 27, 2011 until paid;

1 to take possession of, and deliver to Gilbert Pump, the equipment, provided; that the
2 taking of that property by the Sheriff be conditioned upon the filing of a Bond by
3 Gilbert Pump with the Sheriff in accordance with the provisions of A.R.S. § 12-1303.

4 B. For judgment in favor of Gilbert Pump and against the Trust, which
5 provides that Gilbert Pump is, and was at the time of filing of this complaint and
6 application, entitled to the immediate possession of the equipment, and that Gilbert
7 Pump is further entitled to sell or otherwise dispose of that equipment and apply the
8 proceeds of any such disposition to the indebtedness due and owing by the Trust to
9 Gilbert Pump;

10 C. For Gilbert Pump's attorneys' fees;

11 D. For Gilbert Pump's costs incurred herein;

12 E. For all reasonable post-judgment costs and attorneys' fees incurred by
13 Gilbert Pump in pursuing collection of its judgment, subject to review of this Court as to
14 their reasonableness under the standards governing the award of attorneys' fees;

15 F. For the continuing jurisdiction of this Court to review and determine the
16 reasonableness of any post-judgment costs and attorneys' fees sought by Gilbert Pump;
17 and

18 G. For such other and further relief as may be proper and just under the
19 circumstances.

20
21 DATED this 13 day of April, 2011.

22 HOOPES, ADAMS & ALEXANDER, PLC

23
24 By 

25 John R. Hoopes
26 Patricia A. Alexander
27 2410 W. Ray Road, Suite 1
28 Chandler, Arizona 85224
Attorneys for Plaintiff

EXHIBIT A

CONDITIONAL SALES AND SECURITY AGREEMENT
("Agreement")

Claude K. Neal Family Trust, with its principal place of business at 7313 E. Concho Dr. Ste. B, Kingman, Arizona 86401, ("Buyer"), and Gilbert Pump & Equipment Co., an Arizona corporation with its principal place of business at 1475 East Elwood Street, Phoenix, Arizona 85040 ("Seller"), agree as follows:

Seller agrees to sell and Buyer agrees to purchase subject to the terms and conditions stated below, the property described on Seller's invoice number 84053 dated June 30, 2009 and 84789, dated December 14, 2009 (the "Equipment").

I. Terms and Conditions of Sale

- | | | |
|----|---|-------------|
| 1. | Price | \$61,075.43 |
| 2. | Principal balance as of September 9, 2010 | \$48,867.22 |

II. Terms of Payment

Buyer agrees to pay the principal balance above states plus interest accruing at a rate of 10% per annum on the unpaid balance in accordance with the terms of that certain promissory note dated 10/29/2010 and incorporated by reference herein (the "Promissory Note").

III. Additional Conditions

The following terms and conditions apply to this Agreement:

1. Seller retains a security interest, under the Arizona Uniform Commercial Code, in the Equipment and in all additions and accessions. Title to the Equipment will not pass to Buyer until all sums due under this Agreement are fully paid. Transfer of this Agreement or of any interest in it, or injury to or loss of the Equipment, not caused by the actions of Seller, or its agents or assigns, will not release Buyer from this Agreement.

2. Buyer will keep the Equipment free from all liens, taxes and encumbrances; will maintain the Equipment in good condition and repair, reasonable wear and tear accepted; will not use or permit the Equipment to be removed from the State of Arizona, transfer any interest in this Agreement or in the Equipment, or make any material change in the Equipment, unless agreed to in writing by the Seller, such agreement not to be unreasonably withheld.

3. Buyer assumes all risk of damage to or loss or theft of the Equipment, whether insured against or not. Buyer shall insure the Equipment against loss or damage by policy which names Seller as an additional insured, in amount not less than the above stated balance and by form of policy reasonably satisfactory to Seller. Notwithstanding the foregoing, the amount of the insurance obtained by the Buyer may decrease as the balance of the debt owed to the Seller by Buyer decreases. Upon execution of this Agreement Buyer shall cause Seller to receive proof of insurance in form satisfactory to Seller confirming insurance of the Equipment as required by

this Agreement. Seller may, but need not, insure the Equipment against fire, theft and such other forms of loss. The proceeds of any insurance, whether paid by reason of loss, damages, return of premium, or otherwise, are assigned to Seller. Seller may apply the proceeds either to replacing the Equipment or to payment of Buyer's obligation, in Seller's discretion. Provided, however, if Seller elects to replace the Equipment or any part thereof, such replacement Equipment shall be of equal or better quality of the Equipment as of the date of the loss.

4. Buyer agrees that all payments which are reasonably and customarily necessary that Seller makes for or on account of Buyer's obligations under this Agreement for costs of collection or repossession will be added to the amount due by Buyer under this Agreement and will become payable on demand.

5. If Buyer fails to comply with any provisions of this Agreement, including the due date and amount of payments on the Obligation, misuse of the Equipment, acts for which the Equipment would be confiscated by a government agency, material misrepresentation to Seller, or if there is any unusual or unreasonable depreciation in the value of the Equipment caused by the actions of the Buyer, Seller may, with written notice to Buyer, declare the whole amount unpaid under this Agreement immediately due and payable. Seller may also, with or without demand on Buyer, pursue the remedies of a secured party under the Arizona Uniform Commercial Code. The remedies include, without limitation, the following:

- a. Without taking possession of the Equipment, suing Buyer for the entire unpaid balance due on this Agreement or suing Buyer for any installments then past due without any acceleration of maturity;
- b. Requiring debtor to assemble the Equipment and make it available to Seller at a place designated by Seller or Seller's assignee; or
- c. Taking possession of the Equipment, together with all additions, Equipment, and accessories.

6. This Agreement, Seller's rights in the Agreement, and the moneys payable under the Agreement may be assigned to any person or corporation by Seller. If so assigned, Buyer agrees, to the extent permitted by law, not to raise *as against the assignee* any defenses or claims that Buyer might have against Seller and Seller agrees that any and all claims shall remain between Buyer and Seller regardless Seller's assignment of interest.

7. Time and each of the terms, covenants, and conditions of this Agreement are declared to be of the essence of this Agreement. Neither the failure or Seller to insist on prompt payment or performance when due nor Seller's acceptance of late payment or performance, constitutes a waiver of any past, then existing, or future default by Buyer, or of this or any other provision of the Agreement.

8. This Agreement, the Promissory Note and any Authorization Agreement or other written Agreement executed by Buyer in favor of Seller in connection with its purchase of the

Equipment contains the complete agreement between the parties. No representations or warranties, express or implied, have been made by or on behalf of Seller except those which are stated in the foregoing. Buyer has made an independent investigation of the Equipment and has relied solely on that investigation in entering into this Agreement. Buyer places no reliance in and has not acted on any representations or warranties by Seller or Seller's agents not specifically stated in this Agreement or in Seller's invoice/Authorization Agreement described above.

9. Buyer agrees to exhibit the Equipment and allow inspection of the Equipment at any time on reasonable demand of Seller, and to notify Seller of any change of address.

10. This Agreement may be executed in counterparts. One (1) counterpart shall be delivered to Seller and one (1) copy to Buyer concurrently with the execution of this Agreement.

11. The individuals signing this Agreement in a representative capacity personally and individually represent and warrant that (a) by their signature they are authorized to bind and do bind the party on whose behalf they have purported to sign this Agreement, the Promissory Note and Authorization Agreement, and (b) that no further action or authorization is required to bind that party to all terms of this Agreement, the Promissory Note and the Authorization Agreement. The individual(s) signing this Agreement on behalf of Buyer further personally and individually represents and warrants that the entity named above as Buyer has been correctly identified and is the Buyer of the Equipment. Concurrently with execution of this Agreement Buyer shall deliver to Seller a current and duly executed certificate of trust confirming (a) the valid existence of the Buyer as a trust as of the date hereof, and (b) the authority of the undersigned to sign on behalf of and bind the Buyer to the terms of this Agreement, the Promissory Note and the Authorization Agreement.

12. This Agreement will inure to the benefit of and be binding on the heirs, executors, administrators, successors, and assigns of the respective parties. However, Buyer cannot assign this Agreement without the prior written consent of Seller, which shall not be unreasonably withheld.

13. If, for any reason, any clause or provision of this Agreement is held invalid, then the remaining clauses and provisions will remain in full force and effect.

14. Wherever in this Agreement the singular is used it will be deemed to include the plural.

15. This Agreement is to be interpreted under the laws of the State of Arizona.

DATED and EFFECTIVE this 29th day of October, 2010.

BUYER:

Claude K. Neal Family Trust

By: B. Marc Keap
Its Authorized Trustee

SELLER:

Gilbert Pump & Equipment Company, Inc.

By: L. F. Gilbert
Its Authorized Representative
LARRY F. GILBERT

CHIEF EXECUTIVE OFFICER

EXHIBIT **B**

195
SECRETARY OF STATE

2010 NOV 12 PM 4:06

FILED

201016326189

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

Ryan M. Scharber (480) 345-8845

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Ryan M. Scharber
Hoopes, Adams & Alexander, PLC
2410 W. Ray Rd., Suite 1
Chandler, AZ 85224

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR Claude K. Neal Family Trust

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

7313 E. Concho Dr. Ste B

Kingman

AZ

86401

USA

1d. SEE INSTRUCTIONS

ADDL INFO RE

ORGANIZATION

DEBTOR

1e. TYPE OF ORGANIZATION

Trust

1f. JURISDICTION OF ORGANIZATION

Arizona

1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADDL INFO RE

ORGANIZATION

DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR/S) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR Gilbert Pump & Equipment Co.

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

1475 E. Elwood St.

Phoenix

AZ

85040

USA

4. This FINANCING STATEMENT covers the following collateral:

See Exhibit "A" and "B"

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG, LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable). 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional). All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC-1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

Exhibit "A"

FILE NO: 1745-00

UNOFFICIAL DATA - Fileno: 1632618 CheckDigit: 9 Seqno: 1 Page: 3

Exhibit "B"

Gilbert PUMP & EQUIPMENT CO.

REMITTANCE ADDRESS: P.O. BOX 20218, PHOENIX, AZ 85038-0218
PHONE 602-276-5599 • FAX 602-276-5592

TO: CLAUDE K. NEAL FAMILY TRUST
2409 RICCO DRIVE
KINGMAN, AZ 86401

INVOICE NO: 84789
CUSTOMER NO: CLA200
LOCATION: BANK STREET WELL
FILE NO: 1745-00

DATE: 12/14/09	JOB NO: PP9-0367	SALES NO: 40	P.O. NO:	SHIP VIA:
QTY	MATERIALS	AMOUNT	LABOR	AMOUNT
			FURNISH & INSTALL A NEW 350HP ELECTRIC SERVICE.	
			350HP SOT START STARTER	
			800 AM SERVICE SECTION WITH SHOP DRAWINGS AND PERMITS	
			350HP REBUILT MOTOR	
			CHANGE HEADSHAFT TO FIT MOTOR	
			PULL ALL WIRE, CUSTOMER TO INSTALL ALL CONDUIT & CEMENT PADS	
			ELECTRICIAN INSTALLED WIRE FROM GENERATOR SET TO STARTER	
			WIRE	
			ELECTRICIAN TO HOOK UP GENERATOR	
			FREIGHT	
			TOTAL FOR ABOVE	45,109.00
			LABOR	45,109.00
			MATERIALS	0.00
			FREIGHT	0.00
			TAX	2,433.63
			TOTAL	47,542.63
	TOTAL MATERIALS	0.00		

FILED

BY: _____

2011 APR 21 AM 11:21

VIRLYNN TUNELL
SUPERIOR COURT CLERK

1 HOOPES, ADAMS & ALEXANDER, PLC
2 2410 W. RAY ROAD, SUITE 1
3 CHANDLER, ARIZONA 85224
4 TELEPHONE (480) 345-8845
5 FACSIMILE (480) 345-8828
6 John R. Hoopes (AZ Bar No. 005893)
7 Patricia A. Alexander (AZ Bar No. 023880)
8 palexander@halaw.com
9 Attorneys for Plaintiffs
10
11
12
13
14
15
16

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MOHAVE

9 GILBERT PUMP & EQUIPMENT
10 COMPANY, an Arizona corporation,

11 Plaintiff,

12 v.

13 CLAUDE K. NEAL FAMILY TRUST,

14 Defendant.
15
16

NO.

CU2011-00656

CERTIFICATE OF COMPULSORY
ARBITRATION


(Contract)

17 Pursuant to Ariz. R. Civ. P. 72(b), the undersigned certifies that plaintiff seeks
18 affirmative relief other than a money judgment. This case is, therefore, not subject to
19 arbitration.

20 DATED this 13 day of April, 2011.

21 HOOPES, ADAMS & ALEXANDER, PLC
22

23
24 By



25 John R. Hoopes
26 Patricia A. Alexander
27 2410 W. Ray Road, Suite 1
28 Chandler, Arizona 85224
Attorneys for Plaintiff

ATTACHMENT 3

RECEIVED

JUL 21 2011

Moyes Sellers & Hendricks

FREDERICK CHARLES THOMAS, 023844
SMITH & CRAVEN, P.L.L.C.
5450 E HIGH STREET
SUITE 300
PHOENIX, ARIZONA 85054
VOICE: 480-222-2225
FAX: 480-222-3197
ATTORNEY FOR PLAINTIFF

**SUPERIOR COURT
MOHAVE COUNTY, ARIZONA**

Empire Pump Corporation, an
Arizona Corporation, dba Duncan
Pump,

Plaintiff,

v.

Cerbat Water Company an Arizona
Corporation, B. Marc Neal as
Trustee of the Claude K. Neal Family
Trust; B. Marc Neal and Jane Doe
Neal as husband and wife; Michael
K. Neal and Jane Roe Neal as
husband and wife; and Does 1
through Infinity.

Defendants.

No. _____

Verified Complaint

Empire Pump Corporation, for its complaint against the above-named
defendants, alleges as follows:

GENERAL ALLEGATIONS

The Parties and Jurisdiction

1. Plaintiff, Empire Pump Corporation dba Duncan Pump, is a class
K-29 & K-53 dual licensed machinery and water well drilling contractor, license
numbers 216197 &, 216198 whose licenses were at all times relevant in good
standing with the Arizona Registrar of Contractors.

2. Upon information and belief, Defendant, Cerbat Water Company is
an Arizona corporation doing business in Mohave County, Arizona.

1 3. Cerbat Water Company is a utility company providing water
2 services in Mohave County, Arizona.

3 4. Upon information and belief, Defendant, Neal B. Marc is the trustee
4 of defendant Claude K. Neal Family Trust.

5 5. At all times relevant to this Complaint, Defendant, B. Marc Neal,
6 was acting in his capacity of trustee of the Claude K Neal Family Trust.

7 6. Based on information and belief, Plaintiff alleges that Defendants,
8 B. Marc Neal, and Jane Doe Neal, are husband and wife and residents of
9 Mohave County. Jane Doe Neal is a fictitious name for the wife of B. Marc Neal.
10 Plaintiff reserves the right to amend this Complaint to insert her true name
11 when ascertained.

12 7. Based on information and belief, Plaintiff alleges that Defendants,
13 Michael Neal, and Jane Roe Neal, are husband and wife and residents of
14 Mohave County. Jane Roe Neal is a fictitious name for the wife of Michael
15 Neal. Plaintiff reserves the right to amend this Complaint to insert her true
16 name when ascertained.

17 8. The Claude K. Neal Family Trust is the owner of a certain real
18 property located at 3090 E. Calle Blanca, more particularly described as
19 Mohave County APN: 310-04-082.

20 9. Based on information and belief Plaintiff alleges that Cerbat has a
21 leasehold interest in the Neal property.

22 10. Defendants, John Does 1-Infinity are the fictitious names for those
23 individuals and entities that may be liable to the Plaintiff for the facts herein
24 alleged. Plaintiff reserves the right to amend its Complaint to insert their true
25 names when ascertained.

 11. All matters alleged in this Complaint occurred within Mohave
County, Arizona.

The Events

12. Based upon information and belief Plaintiff alleges that in October of 2009, Cerbat's well motor failed.

13. Based upon information and belief, at the time Cerbat did not have sufficient funds to repair the well.

14. Despite this fact Cerbat repaired the well by installing an electric motor and tapping into a Unisource Electric Power line.

15. Based upon information and belief Plaintiff alleges that as a result of the 2009 well motor failure Cerbat was unable to deliver roughly 250 customers with water.

16. Following the October 2009 well failure Cerbat filed a rate increase request with the Arizona Corporation Commission.

17. Initially Cerbat requested an emergency \$13 a month per customer rate increase.

18. Based upon information and belief, Plaintiff alleges that the ACC denied this emergency rate increase.

19. Based upon information and belief, Plaintiff alleges that the ACC denied the emergency rate increase because Cerbat was utilizing Neal Family Trust funds to cover Cerbat's expenses.

20. Cerbat later requested a permanent rate increase of \$13, which the ACC responded recommending a permanent rate increase of \$.48 per month.

21. Based on information and belief, Cerbat has stated that it cannot operate the well and pay its bills without the \$13 a month rate increase.

22. The same well failed again in December of 2010.

23. On 9 December 2010 Cerbat Water contacted Plaintiff requesting information on its services.

1 24. On 10 December 2010, Cerbat Water contracted with Plaintiff to
2 repair the well pump at Cerbat's facility outside Kingman, Arizona.

3 25. Knowing the need for a functioning pump, Cerbat represented to
4 Plaintiff that it had the necessary funds and instructed Plaintiff to complete
5 whatever work necessary to get the well online again.

6 26. Based upon information and belief Plaintiff alleges at the time
7 Cerbat hired Plaintiff, it did not have the financial ability to pay Plaintiff and it
8 still had not paid off more than \$97,000.00 for the previous well failure in
9 October of 2009.

10 27. On 10 December 2010, Plaintiff mobilized to Kingman Arizona and
11 started removing the pump assembly.

12 28. After removal and inspection of the column pipe and bowl
13 assembly, Plaintiff determined that the pipe and bowl assembly were non-
14 functioning and beyond repair.

15 29. Plaintiff advised Cerbat Water that the pipe and bowl needed to be
16 replaced; Cerbat authorized Plaintiff to obtain a new pipe and bowl assembly.

17 30. On 14 December 2010, Plaintiff purchased the bowl and assembled
18 the bowl and then transported it to Kingman, Arizona.

19 31. In Kingman, Plaintiff installed the new bowl assembly and topped
20 out the pump assembly.

21 32. After installation, Plaintiff conducted necessary tests and
22 determined the well functioned properly.

23 33. On 21 December 2010, Plaintiff submitted invoice number 16950
24 to Cerbat for payment.

25 34. Under the terms of the contract, payment was due to Plaintiff
within thirty-days of submission.

1 35. The ACC has recently approved a rate increase of \$12.53 a month
2 and has ordered the appointment an interim manager for Cerbat.

3 36. The underlying debt for which this action is brought is liquidated.
4 Interest accrues at the contract rate of 18% per annum, or \$11.44 per calendar
5 day.

6 37. As of 01-June-2011 accrued but unpaid principal plus interest will
7 total \$24,462.92. The following chart reflects all open invoices and interest
8 thereupon:

9

DUE DATE	PRINCIPAL	INTEREST	TOTAL
20-Jan-11	\$ 23,204.17	\$1510.50	\$24,714.67

10

11 38. Although demand has been made upon Cerbat for payment on the
12 aforementioned account, no payment has been made.

13 39. Per the terms of the contract, Cerbat Water promised to pay
14 reasonable attorney's fees incurred as a result of collection of the contract sum.

15 40. Payment of attorney's fees is not dependent upon the Defendants
16 contesting the action.

17 41. Plaintiff is entitled to general damages.

18 42. Plaintiff is entitled to special damages.

19 43. Plaintiff is entitled to consequential damages.

20 44. Plaintiff is entitled to attorney fees.

21 45. Plaintiff is entitled to taxable costs.

22 46. Plaintiff is entitled to non-taxable costs.

23 47. Plaintiff is entitled to expert witness fees.

24 48. Plaintiff is entitled to litigation-related expenses.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNT ONE-BREACH OF CONTRACT
(Against Defendant Cerbat)

49. Plaintiff realleges the General Allegations and further alleges as follows.

50. Plaintiff tendered an offer for the supply of valuable consideration.

51. Cerbat Water accepted this offer.

52. Plaintiff tendered valuable consideration and in doing so, incurred detriment.

53. All conditions precedent for Cerbat Water's performance has been met.

54. Cerbat Water has and continues to refuse to perform.

55. Cerbat Water has breached their contract with Plaintiff.

56. As a result of such breach, Plaintiff has been damaged as herein set forth.

COUNT TWO-MECHANIC'S LIEN FORECLOSURE
(Against Defendant Claude K. Neal Family Trust and Cerbat Water)

57. Plaintiff realleges all previous allegations and further allege as follows.

58. Within the time period allowed by Statute, Plaintiff timely filed a Notice and Claim of Mechanics', Materialmen's or Professional Services Liens, which lien was recorded on or about 21 March 2011, in the office of the County Recorder of Mohave County, Arizona, Instrument Recordation Nos. 2011-015074 and amended at Instrument Recordation Nos 2011-024277 and 2011-028392.

59. In accordance with A.R.S. § 33-992 *et seq.*, on 03 January 2011, Plaintiff timely filed a Preliminary 20 Day Notices relating to the subject project

1 and the subject contract agreement. The Preliminary 20 Day Notice is attached
2 to the subject Mechanic's lien.

3 60. Plaintiff has performed all conditions precedent to the perfection of
4 a good and sufficient Mechanics' and Materialmen's lien against the subject
5 property under the provisions of Article 6, chapter 7, Title 33 of the Arizona
6 Revised Statutes.

7 61. By virtue of the foregoing, Plaintiff is entitled to foreclose the
8 Mechanics' and Materialmen's lien against The Defendants which it recorded
9 against the subject property, and be awarded its attorney's fees pursuant to
10 A.R.S. § 33-998A.

11 62. Upon information and belief Plaintiff's lien is first in time and has
12 priority over liens of its subcontractors and the suppliers on the project,
13 including, but not limited to the claims of all named defendants. Hence, its lien
14 should take precedence and the junior liens should be foreclosed.

15 63. Upon information and belief plaintiff's lien is first in time and has
16 priority over the rights asserted in the subject party, if any, by The Defendants.
17 Hence, its lien should take precedence and the junior liens should be
18 foreclosed.

19 **COUNT THREE- PROMISSORY ESTOPPEL**
20 **(Against Defendant Cerbat)**

21 64. Plaintiff realleges all previous allegations and further alleges as
22 follows.

23 65. Cerbat Water promised Plaintiff that it would pay for any work
24 necessary to inspect and repair as needed its pump assembly.

25 66. Cerbat Water could or should have reasonably foreseen that
Plaintiff would rely upon such promise.

67. Plaintiff did rely upon such promise.

1 68. Plaintiff's reliance upon Cerbat Water's promise was reasonable.

2 69. In relying upon Cerbat Water's promise, Plaintiff incurred a
3 detriment.

4 70. As a result of such detrimental reliance, Plaintiff has been damaged
5 as herein set forth.

6 **COUNT FOUR- UNJUST ENRICHMENT**
7 (Against Cerbat & Claude K. Neal Family Trust)

8 71. Plaintiff realleges all previous allegations and further allege as
9 follows.

10 72. Plaintiff has conferred a benefit upon the defendants.

11 73. In conferring this benefit upon the defendants, Plaintiff has
12 suffered an impoverishment.

13 74. In conferring this benefit upon the defendants, the defendants have
14 been enriched.

15 75. The defendants, without justification, have failed to compensate
16 Plaintiff for their conferral of benefit.

17 76. Due to the defendants' failure to compensate Plaintiffs for their
18 conferral of benefit, Plaintiff has been damaged.

19 77. Plaintiff is entitled to equitable relief in this matter as they are
20 without suitable remedy at law.

21 **COUNT FIVE-FRAUD**
22 (Against Cerbat)

23 78. Plaintiff realleges all previous allegations and further alleges as
24 follows.

25 79. As an inducement to Plaintiff to enter into the contract and to
provide the services described above, Cerbat committed fraud.

80. Each assertion of Cerbat was material.

81. Each assertion of Cerbat was false.

- 1 82. Cerbat knew that each of its statements was false.
2 83. Cerbat did not intend to perform as it had promised.
3 84. Cerbat intended Plaintiff to rely upon each statement.
4 85. Cerbat intended that Plaintiff tender their performance based upon
5 each of its assertions.
6 86. Plaintiff did rely upon each statement.
7 87. Plaintiff was not previously aware of the falsity of each of Cerbat's
8 statements.
9 88. Plaintiff believed the statements of Cerbat to be true.
10 89. Plaintiff was justified in relying upon each of Cerbat's statements.
11 90. As a result of each representation of Cerbat, Plaintiff was damaged.
12 91. Plaintiff's damages were as a direct consequence and proximately
13 caused by the Cerbat's assertions.

14 **COUNT SIX -VEIL PIERCING**
15 **(DECLARATORY RELIEF)**

- 16 92. Plaintiff realleges all previous allegations and further alleges as
17 follows.
18 93. At all times relevant to this complaint, the entity defendant was
19 the alter egos of the individual defendants.
20 94. The enterprises acting under the name of the entity defendants
21 were not established on an adequate financial basis.
22 95. Under the law, plaintiff is entitled to declaration from this court
23 that the entity defendants may be disregarded, holding the principals of those
24 entities liable for the matters herein alleged.

25 **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- 1 a. For all Plaintiff's damages in such amount to be proven at trial;
2 b. For an order instructing the Mohave County Sheriff to conduct a
3 foreclosure sale of the subject property;
4 c. For all of Plaintiff's attorney's fees and litigation related expenses
5 resulting from and incurred as a result of defendants' breach and other
6 wrongful actions pursuant to A.R.S. § 12-341.01 and all other applicable
7 statutory and legal authority;
8 d. For Plaintiff's taxable costs pursuant to A.R.S. § 12-341 and all
9 other applicable statutory and legal authority;
10 e. For Plaintiff's non-taxable costs;
11 f. For Plaintiff's expert witness fees;
12 g. For exemplary damages in an amount to be proven at trial;
13 h. For such further relief as the court deems just and proper in the
14 circumstances.

15 Respectfully submitted this 30 day of June 2011.

16 SMITH & CRAVEN, P.L.L.C.

17 By: 

18 Frederick Charles Thomas, Esq.
19 Attorney for Plaintiff
20
21
22
23
24
25

2010610016

VERIFICATION OF MELISSA CRAWFORD

MELISSA CRAWFORD, declares that she is the vice-president of the above-named Plaintiff and is authorized to make statements on its behalf; that she has read the, "Verified Complaint" and knows the contents thereof; that the same is true of her own knowledge, except as to such matters as are therein stated upon information and belief, and as to said last-mentioned matters she believes them to be true.

Pursuant to A.R.Civ.P. Rule 80(i), I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of June 2011.


Melissa Crawford

P:\DOCUMENTS\880 EMPIRE PUMP\02 CERBAT\PLEADINGS\002 COMPLAINT 01.PLD.DOCX

1 HOOPES, ADAMS & ALEXANDER, PLC
2 2410 W. RAY ROAD, SUITE 1
3 CHANDLER, ARIZONA 85224
4 TELEPHONE (480) 345-8845
5 FACSIMILE (480) 345-8828
6 John R. Hoopes (AZ Bar No. 005893)
7 Patricia A. Alexander (AZ Bar No. 023880)
8 palexander@halaw.com
9 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
19 IN AND FOR THE COUNTY OF MOHAVE

10 GILBERT PUMP & EQUIPMENT
11 COMPANY, an Arizona corporation,

12 Plaintiff,

13 v.

14 CLAUDE K. NEAL FAMILY TRUST,

15 Defendant.
16
17

NO.

CV2011-00656

SUMMONS

(Contract)

18 THE STATE OF ARIZONA TO THE DEFENDANT:

19 Claude K. Neal Family Trust
20 7313 East Concho Drive, Suite B
21 Kingman, Arizona 86401

22 YOU ARE HEREBY SUMMONED and required to appear and defend, within
23 the time applicable, in this action in this Court. If served within Arizona, you shall
24 appear and defend within twenty (20) days after the service of the Summons and
25 Complaint upon you, exclusive of the day of service. If served outside of the State of
26 Arizona--whether by direct service, or by publication--you shall appear and defend
27 within thirty (30) days after the service of the Summons and Complaint upon you is
28 complete, exclusive of the day of service. Service by publication is complete thirty (30)

1 days after the date of first publication. Direct service is complete when made. Service
2 upon the Arizona Motor Vehicle Superintendent is complete thirty (30) days after filing
3 the Affidavit of Compliance and return receipt or Officer's Return. Where process is
4 served upon the Arizona Director of Insurance as an insurer's attorney to receive service
5 of legal process against it in this State, the insurer shall not be required to appear,
6 answer or otherwise plead until the expiration of forty (40) days after the date of service
7 upon the Director. A.R.S. § 20-222, 28-1027.

8 YOU ARE HEREBY NOTIFIED that in case of your failure to appear and
9 defend within the time applicable, judgment by default may be rendered against you for
10 the relief demanded in the Complaint.

11 YOU ARE CAUTIONED that in order to appear and defend, you must file an
12 Answer or other proper response in writing with the Clerk of this Court, accompanied
13 by the necessary filing fee, within the time required, and you are required to serve a
copy of any Answer or other response upon the Plaintiff's attorney.

14 The name and address of plaintiff's attorney is:

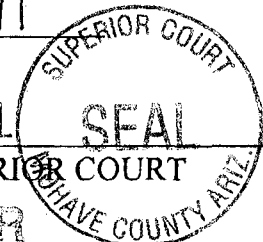
15 John R. Hoopes
16 Patricia A. Alexander
17 HOOPES, ADAMS & ALEXANDER, PLC
18 2410 West Ray Road, Suite 1
Chandler, Arizona 85224

19 REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH
20 DISABILITIES MUST BE MADE TO THE DIVISION ASSIGNED TO THE CASE BY
21 PARTIES AT LEAST THREE (3) JUDICIAL DAYS IN ADVANCE OF A SCHEDULED
22 COURT PROCEEDING.

23 SIGNED AND SEALED this date: 4-21-2011

24
25 VIRLYNN TINNELL
26 CLERK OF THE SUPERIOR COURT

27 By K SECKLER
28 Deputy Clerk



FILED

BY: _____

2011 APR 21 AM 11:21

VIRLYNN TIMMEL
SUPERIOR COURT CLERK

1 HOOPES, ADAMS & ALEXANDER, PLC
2410 W. RAY ROAD, SUITE 1
2 CHANDLER, ARIZONA 85224
TELEPHONE (480) 345-8845
3 FACSIMILE (480) 345-8828
John R. Hoopes (AZ Bar No. 005893)
4 Patricia A. Alexander (AZ Bar No. 023880)
palexander@halaw.com
5 Attorneys for Plaintiff

6
7
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF MOHAVE

10
11
12 GILBERT PUMP & EQUIPMENT
13 COMPANY, an Arizona corporation,

14 Plaintiff,

15 v.

16 CLAUDE K. NEAL FAMILY TRUST,

17 Defendant.
18
19
20

NO. CV2011-00656

AFFIDAVIT OF PLAINTIFF IN
SUPPORT OF ISSUANCE OF
ORDER FOR PROVISIONAL
REMEDY WITHOUT NOTICE -
REPLEVIN

(Contract)

21 State of Arizona)
22) ss.
23 County of Maricopa)

_____, being duly sworn, says as follows:

24 1. I am an attorney for gilbert Pump & Equipment Company and, as such,
25 am authorized to make this Affidavit;

26 2. In the performance of my duties, I have dealt with the account being sued
27 upon herein, and am familiar with the records.
28

1 3. On October 29, 2010 Gilbert Pump and the Claude K. Neal Family Trust
2 (the "Trust") entered into a Conditional Sales and Security Agreement (the
3 "agreement"), in which the Trust agreed to make payments to purchase certain
4 equipment and services from Gilbert Pump.

5 4. Pursuant to the agreement, the Trust granted a security interest in the
6 equipment being purchased.

7 5. A UCC financing statement was properly recorded on November 12,
8 2010.

9 6. The Trust failed to make proper payments.

10 7. Gilbert Pump received a payment in November and another in January.

11 8. The January payment was returned by Gilbert Pump's bank due to "NSF."

12 9. Gilbert Pump notified the Trust of its deficiency and demanded payment.

13 10. The Trust has however failed to make payment as required.

14 11. Pursuant to the terms of the security agreement and Arizona law, upon
15 default, Gilbert Pump is entitled to immediate possession of the equipment without
16 notice to the Trust, and is entitled to sell or otherwise dispose of it and apply the
17 proceeds of any such disposition to the indebtedness of defendants to plaintiff.

18 12. Gilbert Pump has made demand upon the Trust for possession of the
19 equipment but the Trust has failed to surrender the same to Gilbert Pump and is
20 wrongfully detaining said property.

21 13. The actual value of the equipment is \$8,500.00, and the equipment has not
22 been seized under any process, execution, or attachment.

23 14. Gilbert Pump is prepared to file a Bond on Replevin in an amount double
24 the actual value of the equipment, and will file such other pleadings or affidavits as are
25 required by law as a prerequisite to the issuance of the provisional remedy sought by
26 Gilbert Pump in the above-entitled action; and

27 10. All of the foregoing matters are within affiant's personal knowledge.
28

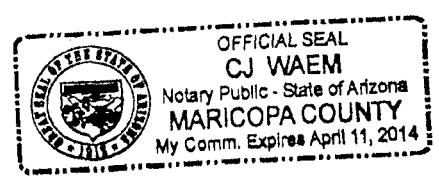
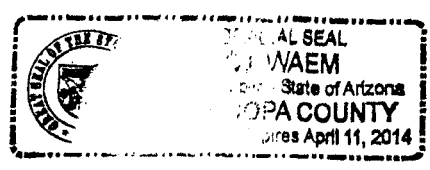
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Robert A. Alexander

SUBSCRIBED AND SWORN before me this 13 day of April 2011.

CJ Waem
Notary Public

My commission expires April 11, 2014



ATTACHMENT 4

Cerbat Well Repair Surcharge Disbursement log

10/24/2011

PAYMENTS	UNISOURCE	MERTENS	GILBERT	EMPIRE	HENDERSON	TOTALS
Aug. 2011	\$ 201.57	\$ 374.35	\$ 1,641.37	\$ 547.12	\$ 115.18	\$ 2,879.59
Sept. 2011	\$ 212.09	\$ 393.88	\$ 1,727.01	\$ 575.67	\$ 121.19	\$ 3,029.84
Oct. 2011	\$ 184.92	\$ 343.42	\$ 1,505.78	\$ 501.93	\$ 105.67	\$ 2,641.72
Nov. 2011						\$ -
Dec. 2011						\$ -
Jan. 2012						\$ -
Feb. 2012						\$ -
Mar. 2012						\$ -
Apr. 2012						\$ -
May. 2012						\$ -
Jun. 2012						\$ -
Jul. 2012						\$ -
Aug. 2012						\$ -
Sept. 2012						\$ -
Oct. 2012						\$ -
Nov. 2012						\$ -
Dec. 2012						\$ -
TOTAL PAID TO DATE:	\$ 598.58	\$ 1,111.65	\$ 4,874.16	\$ 1,624.72	\$ 342.04	\$ 8,551.15
REPAIR COST:	\$ 8,344.00	\$ 15,561.00	\$ 67,662.00	\$ 22,818.00	\$ 5,058.00	\$ 119,443.00
BALANCE REMAINING TO DATE:	\$ 7,745.42	\$ 14,449.35	\$ 62,787.84	\$ 21,193.28	\$ 4,715.96	\$ 110,891.85